

California Department of Fair Employment & Housing

Fair Housing Bulletin

Date: August 26, 2002

Subject: California Supreme Court Confirms Emotional Distress Damages for Victims of Housing Discrimination

The California Supreme Court ruled in favor of the Fair Employment and Housing Commission ("FEHC" or "Commission") on July 29, 2002, in a decision that recognizes the Commission's authority to award emotional distress damages in housing discrimination cases.

The case, Konig v. FEHC, 2002 Daily Journal D.A.R. 8447, challenged a 1997 decision by the Commission in a case of racial discrimination by a housing provider, Nancy Ann Konig, a Caucasian female who owned a duplex in Long Beach. The Commission found that Konig denied rental housing to an African-American woman because of her race and ordered Konig to pay a civil penalty of \$10,000. The Commission also awarded the complainant \$10,000 for emotional distress damages and the lost housing opportunity. In May of 1998, the Los Angeles Superior Court overturned the portion of the judgment awarding emotional distress damages on the ground that the FEHC lacked authority to award such damages, and the Second District Court of Appeal, 93 Cal.Rptr 690, upheld the trial court's judgment in March of 2000. The California Supreme Court reversed that decision.

The issue of the FEHC's authority to award such damages was previously considered by the Supreme Court in 1991 in Walnut Creek Manor v. Fair Employment & Housing Comm. In Walnut Creek Manor, the Supreme Court held that the FEHC's award of emotional distress damages to a housing discrimination complainant violated the judicial powers clause of the California Constitution. In response to the Walnut Creek Manor decision, the Fair Employment and Housing Act (FEHA) was amended in 1992 to include Government Code section 12989 which gives complainants and respondents the right to file an action in Superior Court as an alternative to FEHC (administrative) proceedings.

In the Konig case, the court analyzed the legislative changes to the FEHA and determined that the FEHC can award emotional distress damages without violating the Constitution. The Court found that the amendments, particularly section 12989, remedied the concerns raised in Walnut Creek Manor.

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Why is this decision in the Konig case significant? With the confirmation that the Commission can legally award emotional distress damages in housing discrimination cases, victims can now receive full and effective remedies that might otherwise have been denied. The DFEH believes this decision will further promote the elimination of discriminatory housing practices in California and set the standard for victims' remedies in states across the country.

Additionally, the ability of the FEHC to award emotional distress damages ensures that the FEHA affords protections equal to those available under federal law. Finally, the Supreme Court has reaffirmed the Commission's expertise in housing discrimination cases and the Commission's process as a streamlined and economical means of resolving complaints.

More information about housing discrimination and the FEHA may found on the Department of Fair Employment and Housing's website: www.dfeh.ca.gov.

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